United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1982 74-1982

To Be Argued By:
John F. Triggs

UNITED STATES COURT OF APPEALS
For The Second Circuit

Docket No. 74-1982

MAY LEE INDUSTRIES, INC.

Debtor-Appellant

(Under Proceedings For An Arrangement)

On Appeal From The United States District Court
For The Southern District of New York

BRIEF FOR APPELLEE THE CHARTERED BANK

HAWKINS, DELAFIELD & WOOD
67 Wall Street
New York, New York 10005
Attorneys for Appellee
The Chartered Bank

Of Counsel:

Robert M. McCulloch, Jr.
J. Rush Barnes
John F. Triggs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

TABLE OF AUTHORITIES (Cont'd)

Cases — Page

STATUTES

TABLE OF AUTHORITIES (Cont'd)

UNITED STATES COURT OF APPEALS
For the Second Circuit

Docket No. 74-1982

In the Matter

-of-

MAY LEE INDUSTRIES, INC.,

Debtor-Appellant

On Appeal From The United States District Court
For The Southern District of New York

BRIEF FOR APPELLEE THE CHARTERED BANK

STATEMENT OF ISSUES PRESENTED

The appellee and secured creditor The Chartered Bank ("Chartered") commenced a reclamation proceeding against the debtor-in-possession and appellant herein May Lee Industries, Inc. ("May Lee") in March of 1974[1] to repossess that property of the debtor in which it had a valid perfected security interest pursuant to certain trust receipts. The bankruptcy court as a finder of fact and law determined that Chartered did have a valid per-

[1] All dates unless indicated to the contrary are in 1974.

fected security interest in the goods covered by its financing statement and security agreement. The district court in its role as an appellate court affirmed that decision. The issue presented is:

> Whether the bankruptcy judge and the district court judge were clearly erroneous in their determination that Chartered had a valid perfected security interest in the goods covered by its financing statement and security interest.

In order to answer the above issue, it is necessary to determine whether the bankruptcy court and the district court were clearly erroneous when they determined that:

(i) the financing statement was properly filed;

(ii) the financing statement adequately described the collateral covered;

(iii) the security agreement adequately described the collateral covered.

STATEMENT OF CASE

A. Nature of Case

This is an appeal by May Lee of a decision and order of the district court of July 19, 1974, affirming the decision and supplemental decision of the bankruptcy court dated May 17, 1974 and June 10, 1974, respectively, along with the effectuating order of the bankruptcy court dated June 14, 1974. The decisions all held that Chartered and appellee Chemical Bank ("Chemical") have valid perfected security interests in all the goods and other personal property in the debtor's possession. The orders allowed the

appellees to reclaim the property which is the subject of their valid perfected security interests.

On February 11 May Lee filed a voluntary petition in Bankruptcy under Chapter XI of the Bankruptcy Act (11 U.S.C.§ 701, et seq.). Thereafter by Orders to Show Cause[2] dated the 14 and 27 of March, respectively, both Chartered and Chemical[3] petitioned the bankruptcy court for the reclamation of goods and inventory in the possession of the debtor in which Chartered and Chemical claimed to have valid perfected security interests. The debtor opposed both applications, specifically requesting that a determination as to Chemical's security interest be deferred since Chemical had a security interest in everything other than in which Chartered had a lien (April 9 - 7).[4] The bankruptcy court held trials on the merits of those applications on April 9 and 19.

By an opinion dated May 20, 1974, Judge Galgay found in favor of Chartered, and further found that Chemical had a valid perfected security interest in all the other goods, fixtures and inventory of the debtor. It should be noted that Chartered's

---

2 For the first time the debtor now challenges the procedural propriety of these motions. This frivolous and specious point symbolizes the very nature of this appeal. It is respectfully submitted that any possible grounds for objection have long since been waived.

3 Chartered and Chemical will sometimes be referred to collectively as the "secured creditors."

4 A date followed by a number indicates the page number of the transcript for the hearing on the date listed.

security interest was premised upon trust receipts in specific property and Chemical's was a blanket security agreement which covered virtually all of the debtor's property not covered by the Chartered security interest.

The debtor then moved for a rehearing on May 30, 1974 before an order had been entered by a bankruptcy court. While the primary thrust of the debtor's position at the June 7 rehearing was the properiety of Chemical's security interest, Chartered's position was again challenged. In a supplemental opinion dated June 10, Judge Galgay again found in favor of both Chartered and Chemical.

By order dated June 14, 1974, Judge Galgay permitted the two secured creditors to take such affirmative steps as they deemed necessary to reclaim the assets in question and enjoined the debtor from hindering Chartered and Chemical in their reclamation efforts. Further, the debtor was enjoined by said order from disposing of any of the assets in which it had been determined that Chartered or Chemical had a security interest.

On June 17, 1974, Chemical moved by order to show cause to punish the debtor for contempt in hindering repossession and simultaneously the debtor moved for a stay during the pendency of any appeal of Judge Galgay's Order of June 14.

Chemical's contempt application was withdrawn without prejudice and the debtor was granted a stay of the June 14 order by an order to the district court dated June 20, 1974 which also

provided for an expedited appeal. Judge Galgay, however, allowed the debtor to continue to sell the property in the ordinary course of trade and to apply the proceeds in furtherance of debtor's failing business.

During the afternoon on which the stay order was signed, Chartered obtained from the Hon. Whitman Knapp an order requiring the debtor to show cause why Judge Galgay's stay order should not be modified to afford protection to the Banks against dissipation of the goods subject to their lien; and said show cause order contained a temporary restraining order which enjoined the debtor from disposing of any of the assets in which Chartered or Chemical had a security interest. At a hearing on that order to show cause on June 25, Judge Knapp continued the stay and referred the matter back to Judge Galgay. Thereafter appellant appealed to the district court, pursuant to Judge Galgay's direction for an expedited appeal. On July 2 a hearing was held before the Hon. Robert J. Ward and on July 19 the district court rendered a decision and order affirming in all respects the findings of law and fact made by Judge Galgay.

This is therefore an appeal by the debtor from the decision and supplemental decision of Judge Galgay dated May 20, 1974 and June 10, 1974, respectively, and the order of June 14, 1974 and the affirming decision and order of Judge Ward dated July 19.

B. Statement of Facts

May Lee is a company primarily engaged in the importation and wholesaling of rugs, gift items and related goods principally from the People's Republic of China. Throughout 1972 and 1973 Chartered, one of the few banks in the world authorized to do business in China, advanced various sums of money to the debtor pursuant to irrevocable letters of credit. By virtue of related trust receipts Chartered obtained immediate liens on goods purchased with the letters of credit. The security interest was perfected by filing a financing statement with the Secretary of New York State and the New York City Register in December of 1972. The debtor was loaned some $504,938.09 by Chartered from 1972 to early 1974. Each time the debtor desired to purchase goods in China, Chartered issued a letter of credit; and contemporaneously May Lee executed a trust receipt for the appropriate amount accompanied by various documents describing the goods covered by each trust receipt.

There was a series of defaults by the debtor, such that Chartered is still owed $504,938.09. The Bank was, in fact, Scheduled as a secured creditor for approximately $500,000 in the bankrupt's own verified secured creditor schedule filed with his bankruptcy petition.[5]

---

[5] It should be noted in this context that Chemical and Chartered were the only two banks listed as secured creditors in this petition. May Lee's later assertion that other banks also financed imports pursuant to security agreements is, hence, erroneous prior to filing the Chapter XI petition and highly unlikely subsequent thereto. Indeed, no additional banks have come forward in these proceedings in order to effectuate security interests other than the within appellees.

At the April 9 trial on the secured creditors' petitions for reclamation, Felix M. Rossabi, the deputy controller for Chartered who had been in charge of the May Lee transactions, testified as follows: (April 9 -59)

EXAMINATION BY MR. McCULLOCH:

Q As part of your function with the bank, are you familiar with the filing procedure under the Uniform Commercial Code that is followed by the bank in regard to -- in particular, the May Lee transactions?

A Yes, I am.

Q I hand you this sheet of paper and ask whether you can identify whether that document is part of the records kept in the normal course of business by the Chartered Bank? (Handing.)

A That's right.

Q Can you identify what that document is?

A Well, this is a copy which was received by us from the New York City Register, proving that we filed the U.C.C. filing with them.

Q Is that the official receipt copy?

A That's the official receipt, correct. It has the stamp of the New York City Register.

Q Does it have a date on it?

A It does have, December 4, 1972.

(April 9 - 61)

Q I just handed you a third piece of paper. I again

ask you whether that document is part of the records kept in the normal course of business by the Chartered Bank in regard to the May Lee transactions?

A That's right. This is the filing which was made by the Chartered Bank with the New York State Department and it has the date of December 4, 1972.

Q Can you tell us where that was filed?

A This was filed in Albany.

Q With the Office of the Secretary of State?

A The Secretary of State in Albany.

The debtor did not even cross-examine Rossabi (April 19 - 38). Other than to make a perfunctory motion to dismiss for failure to identify the goods in which there was a security interest, the debtor had no evidence to challenge Chartered's testimony. As stated by the attorney for the debtor:

> "MR. SCHWARTZ: The only evidence that we can conceivably introduce at this moment in support of ourposition that the security interest is imperfect, would be the testimony of our witness Miss Santangelo." (April 19-24)

In essence Miss Santangelo testified that she made two trips in early 1974 to the New York City Register's office and on one of those trips she did not find a filing against May Lee by Chartered (April 19 - 44 to 50). She admitted, however, that on the second trip, made a short time later, she indeed found such a filing, the same having been dated as of December 4, 1972. Nothing was offered to show that the filing was not appropriate and correct in every respect.

C. Opinions Below

In their opinions both the district court and the bankruptcy court fully set forth and answered the arguments proffered by the debtor. As these arguments are essentially the same points brought up on this appeal, their conclusions should be given substantial weight. Both courts below found, in essence, that Chartered and Chemical had valid perfected security interests, that Chartered had properly filed UCC Form-1 with the New York City Register, that the descriptions in Chartered's trust receipts were adequate for identification purposes and that Chemical's security agreement was not voidable as an unconscionable agreement.

As indicated by Judge Galgay, all the debtor could show was that on one occasion a May Lee employee did not find a U.C.C. Form No. 1 filing. In his opinion of May 20, 1974 Judge Galgay held:

> "I find that Chartered Bank has a perfected valid security lien on all collateral which was the subject of series of trust receipts described in Exhibit A attached to its Order to Show Cause dated March 14, 1974 and is entitled to the return of such goods and other collateral which is the subject of the trust receipts.
>
> "I find that Chartered filed its financing statements as required by the Uniform Commercial Code with the Secretary of State in Albany, N.Y. and at the Registers Office in the County of New York on December 4, 1972, and on its face, the financing statements satisfies all the formal requisites of Sec. 9-402 of the Uniform Commercial Code." (Opinion, Page 7 to 8.)

At the June 7 hearing the debtor offered no new evidence to support its allegations concerning Chartered's or Chemical's security

interests. Rather, it reargued its previous position.

Judge Galgay's supplemental opinion of June 10 stated:

> "Based on the entire record before this Court including the rehearing, I am convinced that Chartered Bank and Chemical Bank are entitled to reclaim the Collateral which was the subject of their Security Agreements." (Supp. Op. page 5.)

Thus, at two hearings held on three separate days Judge Galgay accepted all of Chartered's contentions concerning the propriety of the security interest and rejected all of the debtor's arguments to the contrary.

Judge Ward affirmed Judge Galgay's findings in every respect, stating:

> "This Court, after reviewing the record, is of the opinion that Judge Galgay's finding that Chartered filed its financing statement at the Register's Office on December 4, 1974 is not clearly erroneous. (Op. page 4.)
>
> * * * *
>
> "This Court, after examining the security agreements, concludes that the Bankruptcy Judge's finding that the description of collateral is sufficient to make possible the identification of the thing described is not clearly erroneous. His finding that the invoices were part of agreements is supported by the record and cannot be said to be clearly erroneous and that his conclusions of law were correct." (Op. page 6)

ARGUMENT

(A) Introduction

Initially it should be pointed out that the scope of this Court's review in the instant case is greatly limited. In effect this Court would have to make the determination that Judge Ward was "clearly erroneous" in his holding that Judge Galgay was not "clearly erroneous" in his findings of fact and interpretation of law with respect to the validity of the security interests in dispute here. (Rule 52(a), Fed. R. Civ. P. and Rule 810 of the Rules of Bankruptcy Procedure.) This Court would have to reach this conclusion even though Judge Galgay held two separate trials, issued two separate opinions and Judge Ward held a lengthy argument before issuing an opinion. It should be noted, as is obvious from the record, that the debtor has made the same arguments at every step throughout these laborious proceedings. May Lee still has not changed its tact or offered any fresh legal arguments.

I.

THE BANKRUPTCY COURT AND THE DISTRICT COURT WERE NOT CLEARLY ERRONEOUS IN THEIR DETERMINATION THAT CHARTERED HAD A VALID PERFECTED SECURITY INTEREST IN THE COLLATERAL DESCRIBED IN THE TRUST RECEIPTS.

The trust receipt has long been recognized as a valuable method of creating a security interest in goods. (See

Frederick, The Trust Receipt as Security, 22 Col.L.Rev. 395, 1922). Although originally used almost exclusively for the financing of foreign imports, they have gradually grown to be an important and valuable means of secured financing in the area of domestic trade. With the growth of its use has come a commensurate increase in the laws governing its role as a vehicle for financing. Although originally each jurisdiction passed separate legislation, the Uniform Trust Receipts Act ("UTRA") was gradually enacted by most states, including New York in 1934. Its provisions appeared in the Personal Property Law § 50-58-m. These sections were repealed by the adoption in 1964 of the New York Uniform Commercial Code (McKinney's Supp. 1974) (hereinafter cited as the "UCC"). By its terms the UCC specifically enumerates that trust receipts are an acceptable form of security agreement. UCC § 9-102(2). It is therefore necessary to analyze and apply the pertinent provisions of the UCC to the facts of the instant case.[6]

a. The Filing of Chartered's Financing Statement was Proper in All Respects

Judge Galgay found that Chartered had filed its financing statement adequately listing the debtor, creditor and collateral and that both filings were made in the appropriate places

---

6 When a bankruptcy court is dealing with the validity and enforceability of a security interest New York substantive law (the UCC) is to be applied. Hertzberg v. Associates Discount Corp., 272 F.2d 6, 7 (6th Cir.), cert. den. 362 U.S. 950 (1959); Fifth Union Trust Co. v. Kennedy, 185 F.2d 833, 835 (2nd Cir. 1950); In the Matter of Vinarsky, 287 F.Supp. 446 (W.D.N.Y.1968)

(May 20 Op.). The debtor[7] in its attempt to defeat Chartered's security interest offered no evidence to rebut this prima facie showing by Chartered other than the testimony of Miss Santangelo. Thus, the evidence that the secured party complied with the filing requirements of the UCC was unchallenged.

UCC § 9-403(1) states:

> "Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article."

The official commentary to UCC § 9-407 relates further that:

> "the secured party does not bear the risk that the filing officer will not properly perform his duties: under [this] Section the secured party has complied with the filing requirements when he presents his financing statement for filing and the filing fee has been tendered or the statement accepted by the filing officer." Off. Comm. UCC § 9-407.

This point and, indeed, the onus of proving what constitutes a "filing" under the UCC has never been articulated by the debtor. It is assumed by May Lee that if a financing statement cannot be found for any period of time, there is improper filing. The simple fact is that if "presentation" of the financing statement and "tender" of the filing fee "constitutes filing under this Article," appellant has no grounds for claiming im-

---

[7] 11 U.S.C., § 110 (§ 70 of the Bankruptcy Act) gives the trustee all the powers that state law would confer upon a creditor of the bankrupt who had valid lien on all the property of the bankrupt at the date of bankruptcy. Collier's, 4A ¶ 70.49, 70.53; In Re Master Knitting Corp., 7F.2d 11 (2d Cir. 1925).

proper filing on the basis that it could not find the financing statement. As the actual financing statement itself, appropriately stamped by the City Register, and the filing fee receipt were both introduced into evidence, appellant is really estopped from alleging improper filing in light of the clear statement in the UCC as to what "constitutes" filing.

Even assuming arguendo that the Register's Office misplaced or misfiled the financing statement, such an event has no effect whatsoever on the validity of Chartered's security interest. Under New York case law mistakes by the clerk or other appropriate officers do not invalidate the security interest of the filing party. See Mutual Life Ins. Co. v. Dake, 87 N.Y. 257, 163-264 (1881); Reid v. Town of Long Lake, 44 Misc. 370, 89 N.Y.S. 993 (Fulton Co., Sup. Ct., 1904); Pacific Finance Corp. v. Traffic Tire & Rubber Co., 171 Misc. 1034, 14 N.Y.S.2d 613, 614 (N.Y. City Ct.); aff'd per curiam, _____ Misc. _____, 14 N.Y.S.2d 614 (1st App. Term 1939); O'Neil v. Lola Realty Corp., 264 A.D. 60, 63, 34 N.Y.S.2d 449, 451 (2nd Dept. 1942).

This court has itself long recognized, consistent with the above case law, that such mistakes do not invalidate the filing party's secured interest. Mutual Board & Packaging Corp. v. Oneida Nat. B&T Co., 342 F.2d 295, 297 (2nd Cir. 1965); Empire State Chair Co. v. Beldock, 140 F.2d 587, 588, cert. den. 322 U.S. 760 (1944); Constance v. Harvey, 215 F.2d 571, 573 (2nd

Cir. 1954), cert. den. 348 U.S. 913 (1955). These cases have their genesis in the case of In Re Labb, 42 F.Supp. 542 (W.D.N.Y. 1942). In that appeal of a bankruptcy decision, the creditor left the statement with the proper governmental party, the proper fee and the directions to file. The court held that the filing officer's reversal of the name of the seller and buyer did not affect the seller's security interest. The trustee was, in the court's opinion, unable to void the security interest in question. Id. at 544. Thus if there were no Chartered UCC financing statement on file the day Miss Santangelo looked, it still does not affect Chartered's security interest. Chartered made out an unrebutted and unchallenged case for the propriety of its filings through the testimony and exhibits offered before Judge Galgay. Chartered's case on this point was never contradicted.

If it is assumed that the testimony of Miss Santangelo would have had some effect on the validity of Chartered's security interest, had it been true, then quite simply it must be stated that Judge Galgay did not believe Miss Santangelo.[8] As stated by Judge Galgay "the evidence submitted by the debtor has failed to persuade the Court that the financing statements of Chartered were not filed on the date appearing on the face thereof."

---

8 Appellant's later assertion as to searches by another unnamed creditor, Inter-County Clearance Company, and even personnel of the Chemical Bank are really not before this court since the debtor never substantiated this allegation with testimony or evidence of any kind.

(Opinion, Pg. 8). Thus Judge Galgay discounted the testimony of Miss Santangelo as to her inability to find a filing on behalf of Chartered on one of her trips to the City Register's office. The "clearly erroneous" burden that May Lee faces becomes especially heavy when the credibility of a witness is at issue. In Re Gurinsky, 196 F.2d 296 (2nd Cir. 1952); In Re Bo Mfg. Co., 90 F.Supp. 388 (S.D.N.Y. 1950). Therefore, even if Miss Santangelo's testimony was of any relevancy to the propriety of the filing, Judge Galgay's opinion would indicate that he did not place any credence in her testimony.

b. The Description of the Collateral in the Security Agreement was Valid.

UCC § 9-203 states, inter alia, that for a security interest to be valid and enforceable:

> (b) the debtor has signed a security agreement which contains a description of the collateral . . . UCC 9-203(1)b.

This section enacts a statute of frauds for Article 9 of the UCC. The official comment to this section indicates that its requirements as to adequacy of description are found in UCC 9-110. Said section states:

> "For purposes of this Article any description of personal property . . . is sufficient whether or not it is specific if it reasonably identifies what is described."

The official comment for UCC § 9-110 underscores the flexibility of this rule:

> "The test of sufficiency of a description laid down by this Section is that the description do the job assigned to it - that it make possible the identification of the thing described. Under this rule courts should refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called "serial number test." Off. Comm. § 9-110.

Thus for the security agreement to be enforceable against a debtor or third party the written security agreement must reasonably identify what is covered. The need for itemized specificity was not needed nor wanted under the practical approach taken by the UCC. The draftmen's comment quoted above was designed to negate those decisions which required overly detailed descriptions.

The cases interpreting this section liberalize the Code's already liberal requirements. In Rusch Factors, Inc. v. Passport Fashion Limited, 67 Misc.2d 3, 322 N.Y.S.2d 765 (N.Y. Co. Sup. Ct.); aff'd 327 N.Y.S.2d 536, 36 A.D., the court indicated that the description required under the UCC no longer needed to be of an exact detailed nature, rather a general description was adequate so long as identification was possible. Id. at 6, 322 N.Y.S.2d 769. In the case at bar, the goods covered by the trust receipts were adequately described for purposes of identification. Appellant's attempts to confuse this issue by quoting selectively and out of context from the invoices attached to the trust receipts is but another example of the debtor's diversionary tactics throughout these proceedings. Certainly,

such descriptions were adequate for the debtor itself to buy the goods in question, to pay import duties, to secure financing, and to inventory the goods. Indeed, Chartered went farther than it needed, when it identified the goods in such particularity and detail as contained in the trust receipts.

In In re Nickerson & Nickerson, Inc., 452 F.2d 56 at 57 (8th Cir. 1971) the security agreement described the collateral as follows:

> "All gifts, novelties, souvenirs, and other merchandise and inventory held for resale including but not limited to the following: See attached schedules for a list of property covered by this Security Agreement."

The schedules showed the collateral to be "gifts, novelties, souvenirs and other merchandise inventory." The court held that the description incorporated through the attached schedules was sufficient. In the case at bar the bankruptcy court determined that:

> "The security agreements each give a general description of the goods representing the collateral and refer to an attached invoice. The invoices are quite specific in describing the Collateral. The security agreements satisfy the statutory requirement and are valid." (Supp. Op. at 3).

Judge Ward sustained that filing even though the debtor sought to try his case de novo in the district court. The debtor is once again attempting to tie out-of-context facts with old arguments in a vain effort to obfuscate the seminal issues. Char-

tered's security agreement more than adequately described the collateral.

c. The Description of Collateral in the Financing Statement was Adequate.

UCC § 9-402 requires that the collateral covered by a financing statement be described in such a manner so as to reasonably identify the collateral covered by the security agreement. Specificity and detail are also not required under this portion of the Code. Indeed, the system of "notice filing" is expressly adopted by the framers of the Code. UCC § 9-402 Off. Comm.(2), i.e., the public is to be put on notice by a filing under UCC § 9-402 in order to inquire further as to the exact nature and extent of the security interest.

As stated in Gilmore, Security Interests on Personal Property, Sec. 11.4 P. 347:

> "There is a sensible reason for the distinction between security agreement and financing statement. Under the notice filing system which Article 9 adopts, the document placed on record need be only a skeletonic statement that the parties intend to engage in future transactions: * * * Normally the parties doing a secured transaction will evidence their agreement in a written document which will contain a great deal more than the notice required in the Sec. 9-402 financing statement."

Thus as stated above, the description requirements in a financing statement are even less specific than those in the security agreement.

The New York Courts have recognized that the financing statement need not be at all specific in its identification of the collateral covered. Sunshine v. Sanray Floor Covering Corp., 64 Misc.2d 780, 315 N.Y.S.2d 937 (N.Y. Co. Sup. Ct. 1970); Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc.2d 113, 294 N.Y.S.2d 797 (Oneida Co. Sup. Ct. 1968). The debtor contends, however, that the financing statement was insufficient since it didn't particularize the collateral covered by the security interest. In Biggins v. Southwest Bank, 490 F.2d 1304 (9th Cir. 1973) the trustee made a similar argument under the same provision found in the California Commercial Code. The court indicated that such contentions were "frivolous" stating in pertinent part:

> "Only the most basic description of property deemed to be collateral for an Article 9 security interest was contemplated insofar as it might indicate to an interested third party that possible prior encumbrances might exist with respect to prospectively contemplated collateral. Only a 'simple notice' was required by this section." [9-402].

And the Fourth Circuit in dealing with the same provision in the Virginia UCC has stated:

> "The code has rejected 'exact and detailed' descriptions in favor of those which reasonably identify what is described (cite omitted) . . . All that is required under the code, then, is that the financing statement be sufficiently descriptive so as reasonably to generate further inquiry." Id. at 436, 437.

Chartered's financing statement certainly fulfilled these requirements. It stated that it covered:

"Documents of title and/or goods, whether now existing or hereafter acquired as defined in the UCC including but not limited to inventory and/or all present and future accounts receivable and related documents of title: General Merchandise including Carpets, Giftware, Jewelry and Home* Furnishings.

*but only with respect to, or arising out of specific financing provided by the secured party."[9]

If such a financing statement doesn't fulfill the notice requirements of the UCC then nothing in all practicality ever will. It clearly indicates that May Lee is granting a security interest in inventory of May Lee which is the subject of certain security agreements. Underscoring the validity of this statement is the complete absence of any challenge by any other creditor as to the validity on any grounds of Chartered's security interest.

---

[9] Indeed, another example of appellant's scurrilous tactics in these proceedings is evident on page 53 of its brief when it quotes the above language "Documents of title and/or goods . . ." and proceeds to state that "on information and belief May-Lee, the Appellant has possession of neither documents of title nor documents of goods from any relations with Chartered Bank, therefore the statement covers no collateral in the possession of May-Lee, the Appellant. . ." (Emphasis added.) It is painfully obvious to all but the most inastute observer that the above language refers to "documents" and/or "goods," not "documents of goods." This is, unfortunately, typical of appellant's twisting of language and facts in a most unwarranted fashion in order to achieve a self-serving, but legally invalid, conclusion.

CONCLUSION

For all of the reasons hereinabove set forth, the opinions and orders of the bankruptcy court and district court should in all respects be affirmed and this Court's partial stay dissolved forthwith.

Respectfully submitted,

HAWKINS, DELAFIELD & WOOD
Attorneys for Appellee
The Chartered Bank

By Clarence Fried
A Member of the Firm

Office and Post Office Address:
67 Wall Street
New York, New York 10005
(212) 952-4700

Of Counsel:

Robert M. McCulloch, Jr.
J. Rush Barnes
John F. Triggs

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In the Matter -of- MAY LEE INDUSTRIES, INC., Appellant.	In Proceedings for an Arrangement Docket No. 74-1982 AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CHARLES PETRONE being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the 6th day of August, 1974 deponent served the within Brief upon Otterbourg, Steindler, Houston & Rosen, P.C. at 350 Park Avenue, New York, New York 10022, to the attention of William M. Silverman, Esq., attorneys for the appelle Chemical Bank in this action, the same being the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Charles Petrone

Sworn to before me
this 6th day of August, 1974

John F. Trigg
Notary Public

JOHN F. TRIGGS
Notary Public, State of New York
No. 31-9379700
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - - - - - - - - - - - - - - - -x

In the Matter : In Proceedings for an Arrangement

-of- : Docket No. 74-1982

MAY LEE INDUSTRIES, INC., :

Appellant. : AFFIDAVIT OF PERSONAL SERVICE

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Samuel H. Gelb, being duly sworn, deposes and says:

1. I am over the age of 18 years and not a party to this action.

2. On the 6th day of August, 1974, deponent served the within Brief upon David C. Buxbaum, Esq. at 31 East 32nd Street New York, New York, attorney for Appellant-Debtor in this action by delivering a true copy thereof to said attorney.

Samuel H. Gelb

Sworn to before me this
6th day of August, 1974

John F. Triggs
Notary Public

JOHN F. TRIGGS
Notary Public, State of New York
No. 31-9379700
Qualified in New York County
Commission Expires March 30, 1976